

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 164 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

RAMUBHAI ALIAS RAMUBHAI TAPALI AMAIDAS PATEL

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 164 of 2004
MR ANIL S DAVE for Petitioner No. 1
MR KAMEN N SHUKLA for Petitioner No. 1
MR AY KOGJE, AGP for Respondent No. 1-3
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CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 22/06/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu
has challenged his detention order dated 19-12-2003, by

which he is detained under P.A.S.A. as a "bootlegger". Along with the said order, the petitioner is served with the grounds of detention. In the grounds of detention, there is a reference of two criminal cases registered against the petitioner under the Bombay Prohibition Act. The detaining authority after considering the material on record has passed the order of detention.

2) Mr.Dave, learned advocate for the petitioner submitted that the last incident against the petitioner was registered on 18-9-2003 and thereafter, the petitioner was released on bail on 26-9-2003 and after a considerable time of more than about two and a half month the order of detention was passed on 19-12-2003. He submitted that if really the activities of the petitioner are so dangerous, it is not necessary to wait for such a long time after he is released on bail. It is also submitted by him that because the petitioner is released on bail, the order of detention was passed. He further submitted that it cannot be said that the petitioner has committed breach of public order as only two criminal cases are filed against him and this is not a case in which the petitioner is required to be detained under P.A.S.A. It is submitted by Mr.Dave that no statement of witnesses have been recorded and the order of detention is passed only on the basis of two criminal cases. Regarding the ground of delay in passing the detention order, averment is made in para 14 of the petition. In this behalf, reference is made to the decision of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City & Others reported in 1997 (1) G.L.H. 381 wherein this Court has observed in Para 21 as under:-

"21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appeared to be some substance in the contention of the petitioner that these

two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash V. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S.Ramamurthy reported in 1993(2) Suppli. SCC 61."

3) Unfortunately, no affidavit in reply has been filed by the respondent-authority, therefore, the averment of delay in passing the detention order is not controverted. Since the averment in connection with delay is not denied by the respondent-authority and delay in passing the detention order is not properly explained by the respondent, this petition is required to be allowed.

4) Accordingly, this petition is allowed. The order of detention dated 19-12-2003 is quashed and set aside. The detenu, Ramubhai alias Ramubhai Tapali Amaidas Patel is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar, J.)

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